

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW JERSEY**

|   |                     |
|---|---------------------|
| Javier Alavez-Lopez, et al.               |                     |
| Plaintiffs                                | CIVIL ACTION        |
| v.  | No. 10-5647-NLH-KMW |
| South Jersey Sanitation Co., Inc., et al. |                     |
| Defendants                                |                     |

**ORDER**

**AND NOW**, this \_\_\_\_\_, day of \_\_\_\_\_, 2011, upon consideration of Plaintiffs' Motion to Compel, it is hereby:

**ORDERED** that Plaintiffs' Motion is **GRANTED**. Defendants shall provide full and complete responses to Plaintiffs' Interrogatories and Plaintiffs' Requests for Production of Documents without objection within 10 days of the entry of this Order;

It is further **ORDERED** that Defendants are to pay to counsel for Plaintiffs, within 10 days of the entry of this Order, the amount of \$600 as a sanction for the attorney's fees incurred as a result of Defendants' non-compliance with this Court's Order of June 30, 2011, as well as for Defendants' non-compliance with the Federal Rules of Civil Procedure; and

It is further **ORDERED** that should Defendants fail to timely comply with either of the above directives of this Court, Defendants shall be subject to further sanctions.

\_\_\_\_\_  
J.

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| Defendants                                |                     |

**MOTION TO COMPEL**

Plaintiffs, Javier Alavez-Lopez, *et al.*, by and through their undersigned counsel, hereby bring this Motion to Compel Discovery pursuant to the Federal Rules of Civil Procedure:

1. The Amended Complaint in this action was filed on December 1, 2010, to redress violations by Defendants of the Fair Labor Standards Act, New Jersey Wage and Hour Law, and New Jersey Wage Payment Law.

2. On May 12, 2011, Plaintiffs served Defendants with Interrogatories and Requests for Production of Documents.

3. On June 15, 2011, Plaintiffs contacted Defendants' counsel to inquire into the status of Defendants' discovery responses. Defendants did not respond to the inquiry.

4. On June 21, 2011, Plaintiffs sent a letter to this Court concerning Defendants' failure to provide responses to discovery.

5. On June 30, 2011, this Court held, via telephone, a status conference to address Defendants' failure to respond to discovery; following said conference, this Court issued an Order directing Defendants to provide responses to discovery by July 15, 2011; said Order granted Plaintiffs leave to file a motion to compel if Defendants failed to do so.

6. On July 15, 2011, Defendants' counsel emailed to Plaintiffs' counsel documents that purport to be payroll records. Defendants did not, however, respond in any fashion to Plaintiffs' Interrogatories and did not provide any written response to Plaintiffs' Requests for Production of Documents.

7. To date, Defendants have not responded in any fashion to Plaintiffs' Interrogatories, and have not provided any written responses to Plaintiffs' Requests for Production of Documents.

8. Defendants' failure to respond to Plaintiffs' discovery requests is solely to evade their discovery obligations, so that Defendants may delay and harass Plaintiffs; Defendants are well aware of Plaintiff's pending deadline to file for Preliminary Class Approval (said deadline was originally set for July 18, 2011, but was moved to August 22, 2011 due to Defendants' prior discovery misconduct).

9. Plaintiffs' counsel was forced to spend two (2) hours preparing the instant Motion because of Defendants' failure to comply with their discovery obligations; at a reasonable rate of \$300/hour, this amounts to an expenditure of \$600 of attorneys' fees.

10. This Court's of June 30, 2011 Order clearly put Defendants on notice that their continued failure to provide discovery could result in sanctions being imposed. The Order provides: "THE FAILURE OF A PARTY OR ATTORNEY TO OBEY THIS ORDER MAY RESULT IN IMPOSITION OF SANCTIONS UNDER FED. R. CIV. P. 16(f)."

11. Sanctions are further warranted because this is the second time that Plaintiffs have been forced to involve this Court due to Defendants' failure to comply with this Court's Orders and the Federal Rules of Civil Procedure.

12. For the foregoing reasons, Plaintiff respectfully requests that this Honorable Court

compel Defendants to provide complete responses (without objections) to Plaintiffs' discovery requests and that Defendants pay to Plaintiffs' counsel the reasonable attorneys' fees incurred for filing the instant Motion (\$600).

**WHEREFORE**, Plaintiffs respectfully request that this Honorable Court grant their Motion and enter the attached Order.

Respectfully submitted,

**SWARTZ SWIDLER, LLC**

/s/ Richard S. Swartz

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*Attorney for Plaintiffs*

Dated: August 4, 2011